

ATTACHMENT F

17 July 2014
ACL rescission letter

Central Valley Regional Water Quality Control Board

17 July 2014

LARRY W. & SHIREEN I. SLATE
8760 VOORHEES ROAD
LE GRAND, CA 95333

CERTIFIED MAIL No.
7009 1410 0002 1421 6792

RESCISSION OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2014-0529, FOR LARRY W. AND SHIREEN I. SLATE

On 10 May 2014, the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) Prosecution Team issued Larry W. and Shireen I. Slate ("Slate") an Administrative Civil Liability Complaint (Complaint) in the amount of three thousand and eighty dollars (\$3,080) for failure to obtain regulatory coverage for the discharges from your irrigated lands as required under Water Code Section 13260. A hearing on the matter was scheduled for the 7/8 August 2014 Board meeting in Rancho Cordova.

On 11 July 2014, the Advisory Team issued a memorandum regarding proposed settlements for the David L. & Linda M. Davis Trust and for William R. Sinks et al. matters (see attached). The Prosecution Team believes that the issues raised in that memorandum apply also to this matter. In order to address those issues, ACL Complaint R5-2014-0529 is hereby rescinded.

The Central Valley Water Board reserves the right to reissue the ACL Complaint in the future and to take any other enforcement actions allowed by law for the violations described in the ACL Complaint.

If you have any questions regarding this matter, please contact Dana Kulesza at (916) 464-4847 or by email at dkulesza@waterboards.ca.gov.

Original Signed by

ANDREW ALTEVOGT
Assistant Executive Officer

Attachment: 11 July 2014 Advisory Team Memorandum

cc via email: Pamela Creedon, Central Valley Water Board, Rancho Cordova
Rob L'Heureux, Central Valley Water Board, Rancho Cordova
Andrew Tauriainen, Central Valley Water Board, Rancho Cordova
Naomi Kaplowitz, Central Valley Water Board, Rancho Cordova
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
David Robinson, Merced County Agricultural Commissioner
Parry Klassen, East San Joaquin Water Quality Coalition



Central Valley Regional Water Quality Control Board

11 July 2014

To: David L. & Linda M. Davis Trust
David L. & Linda M. Davis, Trustees
21877 Avenue 5
Madera, CA 93637

William R. Sinks, et al.
10873 Ave 18 1/2
Chowchilla, CA 93610

Andrew Altevogt, Central Valley Water Board [via email to
Andrew.Altevogt@waterboards.ca.gov]

Joe Karkoski, Central Valley Water Board [via email to Joe.Karkoski@waterboards.ca.gov]

Kenneth Landau, Central Valley Water Board [via email to Ken.Landau@waterboards.ca.gov]

Rob L'Heureux, Central Valley Water Board [via email to Robert.LHeureux@waterboards.ca.gov]

Naomi Kaplowitz, Office of Enforcement [via email to Naomi.Kaplowitz@waterboards.ca.gov]

Wesley Ouimette, Central Valley Water Board [via email to
Wesley.Ouimette@waterboards.ca.gov]

Cc: Parry Klassen, East San Joaquin Water Quality Coalition [via email to pklassen@unwiredbb.com]
Tess Dunham, Somach Simmons and Dunn [via email to tdunham@somachlaw.com]
Patrick Pulupa, State Water Board, Office of Chief Counsel [via email to
Patrick.Pulupa@waterboards.ca.gov]

The Central Valley Water Board's Advisory Team has reviewed the proposed settlements for the David L. & Linda M. Davis Trust and for William R. Sinks et al. After reviewing the proposed settlements, the Board's Advisors, to whom the Board has delegated the authority to sign and finalize Administrative Civil Liability settlements, must ask Prosecution Team and the Dischargers to further explain how the proposed assessments adequately address the Board's regulatory interests. It appears that the proposed assessments are not sufficient to deter similarly-situated parties from engaging in identical conduct, which would seriously threaten the integrity of one of the Board's most important regulatory programs.

The State Water Board's Enforcement Policy states that, "[v]iolations involving recalcitrant parties who deliberately avoid compliance with water quality regulations and orders are ... considered class I priority

violations because they pose a serious threat to the integrity of the Water Boards' regulatory programs." Class I violations are the most serious class of violations described in the Enforcement Policy, and this description fits the violations charged in the two proposed settlements currently under consideration.

The following factors influence the Board's Advisory Team's decision to tentatively reject the proposed settlements:

- The Board's Advisory Team has not received any evidence that the appropriate fees have actually been paid to the Coalition and/or to the State Water Board. Without this information, it is impossible for the Board to treat these costs as "delayed" or "deferred" costs rather than "avoided" costs.
- Taking the position that the economic benefit of non-compliance is solely related to the non-payment of regulatory fees seems to imply that paying fees is the only obligation that the Board has imposed under the Board's Irrigated Lands Regulatory Program. Regulated entities have needed to participate in regional monitoring efforts, develop and submit farm evaluations, respond to potential water quality threats discovered during the course of preparing reports, and attend informational and educational meetings conducted by the Coalitions themselves. Therefore, there is a significant cost savings associated with non-compliance that does not appear to be captured by the economic analysis that has been provided along with the Administrative Civil Liability Complaints.
- In this context, the USEPA BEN Model may be an inappropriate tool for determining the economic benefit of non-compliance. The BEN Model works by identifying the difference between the costs that a violator would have incurred had it complied on time and those it actually incurred due to delayed compliance. This means that while the BEN Model is ideally suited for deriving the economic savings resulting from *delaying capital investments in pollution control devices and avoiding the costs of operating such equipment during the period of noncompliance* (Ben User's Manual at 1-2.), it may not truly capture the economic benefit of not complying with a regulatory program that is more dependent on the intelligent and responsible implementation of management techniques than on the installation of expensive pollution control devices. The State Water Board's Enforcement Policy allows for the use of other measures of economic benefit should the BEN analysis not adequately capture the true economic benefit realized by the violator.
- The Board can reduce multi-day violations to a lower figure if it makes express findings that the violations do not cause "daily detrimental impacts to the environment or the regulatory program." However, it is certainly conceivable that the erosion of a regulatory program by the non-participation of not only the named violators, but of many other similarly-situated parties, *does* result in daily detrimental impacts. Further explanation is warranted.
- From the material provided, the Board's Advisory Team cannot glean the rationale for reducing the proposed liability on the basis of the size of a Discharger's operation. Different sized operations may present a different potential for harm, and a larger operation might have a different ability to pay a civil liability assessment. This means that the Enforcement Policy's metrics do, in fact, account for differences between operations of different sizes. If the Prosecution Team and the Discharger wish

to continue to propose reducing the assessments on the basis of the size of Dischargers' operations, they must elaborate on the rationale for doing so, and this must include an explanation of why the requirements applicable to larger farm differ in a meaningful way from the requirements applicable to medium-sized or smaller operations.

- The Advisory Team has not been assured that the assessment wouldn't simply be considered "the cost of doing business" and would therefore not serve a significant deterrent effect.

The Board's Advisory Team invites the Discharger and the Prosecution Team to develop Administrative Civil Liability Stipulated Orders that contain findings that address the above concerns. This may or may not result in a re-assessment of the proposed liability amount. Any new Stipulated Order would need to be re-circulated for a new 30-day comment period.

If the Discharger and the Prosecution Team cannot agree to the terms of a revised Stipulated Order, then the Prosecution Team shall make arrangements to place the consideration of the Administrative Civil Liability Complaints on the Board's calendar, to be heard as expeditiously as possible.

Sincerely,



Pamela C. Creedon, Executive Officer

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Article Addressed to:

LARRY W. & SHIREEN I. SLATE
8760 VOORHEES ROAD
LE GRAND, CA 95333

Article Number

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7009 1410 0002 1421 6792

COMPLETE THIS SECTION ON DELIVERY

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Shireen I. Slate

Agent

Addressee

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Shireen I. Slate

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